

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Case No. 05-00211-01-CR-W-FJG
)	
DONALD E. TOOLEY,)	
)	
Defendant.)	

REPORT AND RECOMMENDATION

On June 7, 2005, an Indictment was returned charging the defendant with being a felon in possession of ammunition which had traveled in interstate commerce in violation of 18 U.S.C. §§ 922(g)(1) and 924(e). Defense counsel filed a Motion for Determination of Competency (doc. # 18) asking for a psychiatric or psychological examination, which request the government did not oppose. Thereafter, on July 5, 2005, the Court ordered that a competency examination be conducted at a United States Medical Center for Federal Prisoners.

On October 12, 2005, a hearing was held on the issue of defendant's competency. The only evidence offered by the parties was the report prepared by the Metropolitan Detention Center in Chicago, Illinois, dated September 21, 2005. The report concluded that the defendant has symptoms of depression, isolation, excessive worry, suspiciousness of others which have negatively impacted his interpersonal functioning. Despite the presence of these symptoms the examiner concluded that "there was no clear evidence to indicate the defendant is not competent to proceed with the process of criminal adjudication at this time."

Therefore, based on the information before the Court, it is

RECOMMENDED that the Court, after making an independent review of the record and

applicable law, enter an order finding that defendant Donald Tooley is not currently suffering from a mental disease or defect which would prevent him from understanding the nature and consequences of the proceedings against him or assisting in his own defense and that he is competent to stand trial.

Counsel are reminded they have ten days from the date of the receipt of a copy of this Report and Recommendation within which to file and serve objections to same. A failure to file and serve timely objections shall bar an attack on appeal of the factual findings in this Report and Recommendation which are accepted or adopted by the district judge, except on grounds of plain error or manifest injustice.

/s/

SARAH W. HAYS
UNITED STATES MAGISTRATE JUDGE